

ceedings under which the decree passed, by a mortgagor, who, by the terms of the mortgage, was to remain in possession until default was made by the non-payment of the interest, the annual payment of which, would preclude, by its terms, a foreclosure of the mortgage. **HELD—**

That such an interest, derived from such a source, and attended with a considerable outlay of money in the improvement of the property, would require, before the rights of the party are absolutely concluded, that the regular and established course of legal proceedings should be pursued.

[The facts of the cause are so fully set forth in the opinion, as to require no additional statement.]

THE CHANCELLOR:

It appears by the proceedings in this case, that on the 9th of July, 1831, Richard Caton, now deceased, being indebted to Roswell L. Colt in the sum of \$13,110 43, with interest from the 31st of December, then last past, for the purpose of securing the repayment of the money with interest, executed, on the first named day, a deed of mortgage to the said Colt, of two parcels of land in Baltimore county, with an agreement, that so long as the mortgagor should pay the mortgagee the interest upon the debt annually, at the rate of five *per centum*, he should continue and remain in possession of the mortgaged premises, and that until the mortgagor should make default in the payment of the interest as aforesaid there should be no foreclosure of the mortgage.

This mortgage, and the debt secured thereby, was afterwards, that is to say, on the first day of July, 1835, assigned by the mortgagee, to Charles Oliver and others, the complainants in this case, who, on the 29th of August, 1845, filed their bill in this court for a foreclosure and sale, upon the allegation that default had been made in the non-payment of the interest according to the covenant. The parties, defendants to this bill, were those to whom Caton, the mortgagor, had granted and conveyed his interest in the mortgaged premises in May, 1845. And a decree having passed for the sale of the mortgaged premises, on the 30th of March, 1846, the same were accordingly sold on the 4th of June following, for the sum of \$14,000, which sale has been duly ratified and confirmed by the court.